

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 9 Contracts
Negotiated Service Agreements

Docket No. MC2018-6

Competitive Product Prices
Global Expedited Package Services 9 Contracts
(MC2018-6)
Negotiated Service Agreement

Docket No. CP2018-11

PUBLIC REPRESENTATIVE COMMENTS ON
REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD
GLOBAL EXPEDITED PACKAGE SERVICES 9 CONTRACTS TO THE COMPETITIVE
PRODUCTS LIST

(October 20, 2017)

INTRODUCTION

The Public Representative hereby provides comments pursuant to the Commission's notice initiating this docket.¹ In that notice, the Commission established the above referenced dockets to receive comments from interested persons, including the undersigned Public Representative, on a Request of The United States Postal Service to add Global Expedited Package Services 9 (GEPS 9) contracts to the competitive products list.² The Request includes a redacted copy of the GEPS 9 contract (Contract) which is the subject of Docket No. CP2018-11, a Statement of Supporting Justification, and a redacted Certification of Compliance with 39 U.S.C. § 3633(a) as required by 39 C.F.R. § 3015.5(c)(2).³ Redacted supporting financial models were filed separately as Excel files, and unredacted versions of redacted documents were filed under seal.

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, October 16, 2017.

² Request of The United States Postal Service to Add Global Expedited Package Services 9 Contracts to the Competitive Products Lists; and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, October 13, 2017 (Request)

³ The Request also included a redacted copy of Governors' Decision 11-6, a proposed revision to MCS section 2510.3, and an application for non-public treatment of materials as attachments.

GEPS 9 contracts are “similar to contracts that the Postal Service has filed with the Commission as GEPS 3 contracts.” Request at 3. These contracts are negotiated with mailers to provide volume-based incentives for the tendering of large volumes of Priority Mail International (PMI) and Priority Mail Express International (PMEI) parcels. Statement of Supporting Justification at 3.

Prices and classifications “not of general applicability” for GEPS agreements were previously established by Governors’ Decision No. 11-6. In Order No. 86, the Commission established GEPS as a product on the competitive product list and provided that functionally equivalent GEPS contracts may be included within a GEPS product.⁴ Accordingly, the Contract filed in the instant proceeding would serve as the baseline agreement for the GEPS 9 product, which would include the Contract itself together with any subsequent functionally equivalent GEPS 9 contracts, subject to approval by the Commission. Request at 2.

The Postal Service will notify the Mailer of the Effective Date of the Agreement as soon as possible, but no later than thirty (30) days, after receiving the approval of the Commission. Contract at 2-3. The duration of the contract extends for one calendar year from the effective date or the last day of the month which falls one calendar year from the Effective Date, whichever is later, unless terminated sooner. *Id.*

COMMENTS

Under 39 U.S.C. § 3642(b), the criteria governing the Commission’s determination regarding the addition of a product to the competitive products list are (1) whether the product qualifies as market dominant; (2) whether the product is covered by the postal monopoly and therefore excluded from classification as a competitive product; and (3) whether certain additional considerations, including private sector competition, the impact on small businesses, and the views of product users, warrant classification other than that supported by criteria (1) and (2).

Pursuant to 39 U.S.C. § 3633(a), the prices set by the Postal Service must not result in the subsidization of competitive products by market dominant products; ensure

⁴ Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

that each competitive product will cover its attributable costs; and ensure that all competitive products collectively cover an appropriate share of the institutional costs of the Postal Service.

After reviewing the Postal Service's Request, Statement of Supporting Justification, Contract, Certification of Compliance with 39 U.S.C. § 3633(a), and the supporting financial models for the Contract filed under seal, the Public Representative agrees that the proposed GEPS 9 product satisfies the requirements for inclusion on the competitive products list. In addition, the prices negotiated in the Contract that will serve as the baseline agreement for future GEPS 9 contracts should generate sufficient revenues to cover costs and therefore satisfy 39 U.S.C. § 3633.

Compliance with 39 U.S.C. § 3642: The Postal Service makes a number of assertions that address the requirements of 39 U.S.C. § 3642(b). First, the Postal Service states that the GEPS 9 product does not qualify as market dominant because "[t]he Postal Service does not exercise sufficient market power so that it can effectively set the price of GEPS 9 'substantially above costs, raise prices significantly, decrease quality, or decrease output without risk of losing a significant level of business to other firms.'" Request at 4. Second, the Postal Service states that "the Qualifying Mail in GEPS 9 contracts are intended for the conveyance of merchandise, which falls outside the scope of the Private Express Statutes." *Id.* Finally, the Postal Service asserts that neither considerations relating to private sector competitors, the views of customers, nor small businesses preclude inclusion of the GEPS 9 product on the competitive products list. Statement of Supporting Justification at 4-5. These assertions appear reasonable. Accordingly, the Public Representative concludes that the GEPS 9 product warrants classification as a competitive product.

Compliance with 39 U.S.C. § 3633(b): The Postal Service provides financial models which support its assertion that the GEPS 9 product should generate sufficient revenue to cover costs and ensure that no cross-subsidization of this product by market dominant products will occur. *Id.* at 2. Further, it asserts that the level of cost coverage of the new GEPS 9 product should contribute to an appropriate share of institutional costs in addition to covering its own attributable costs. *Id.* The Public Representative finds these assertions reasonable. Furthermore, while it is possible that the inclusion of

additional contracts to the GEPS 9 product may cause the product as a whole to fail to cover costs, the Commission will have an opportunity to review future contracts and determine their functional equivalency with this Contract and verify that the GEPS 9 product will continue to meet the requirements of 39 U.S.C. § 3633.

The Public Representative respectfully submits the preceding comments for the Commission's consideration.

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